

SPECIAL CIVIL APPLICATION No 8606 of 1999

Hon'ble MR.JUSTICE A.R.DAVE

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HEIRS OF DEC BHAGWANBHAIR MANSANGBHAIR

Versus

STATE OF GUJARAT

Appearance:

MR MB GANDHI for Petitioners

MR GOHIL, A.G.P., for Respondent No. 1

MR BM MANGUKIYA for Respondents Nos. 2 to 4

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 22/11/1999

ORAL JUDGEMENT

Rule. Service of rule is waived by learned
advocate Shri Mangukiya for respondents Nos. 2 to 4 and

learned AGP Shri Gohil for respondent No. 1.

By virtue of the present petition, the petitioners have challenged order dated 25.10.99 whereby the Gujarat Revenue Tribunal had rejected Restoration Application No. 45/99 filed by the present petitioners for restoration of appeal No. TEN.B.A. 101/97.

It has been submitted by learned advocate Shri M.B. Gandhi appearing for the petitioners that only on account of some mistake committed by the learned advocate appearing on their behalf before the tribunal, the appeal in question was dismissed for default. In support of the said submission, he has relied on an affidavit filed by learned advocate Shri A.I. Desai dated 4.11.99. It has also been observed in the impugned order that intimation of the date on which the appeal was to be heard was sent to the office of the learned advocate and somebody from the office of the learned advocate had also received the intimation and acknowledgment to that effect was also made. Somehow, the learned advocate did not know the said fact and therefore he did not remain present when the appeal in question was to be heard before the tribunal.

It is not in dispute that the office of the learned advocate had committed some mistake by not communicating the date with regard to hearing of the appeal to the learned advocate and in these circumstances, the petitioners should not suffer and therefore it would be just and proper to allow the petition but, at the same time, some cost should be imposed upon the petitioners. The amount of cost is quantified at Rs. 5000/-. Each respondent shall get Rs. 1250/-. The amount of cost shall be deposited on or before 6.12.99 with the tribunal and the learned advocate appearing for respondents Nos. 2 to 4 shall be permitted to withdraw the said amount, whereas the remaining amount shall go to the State of Gujarat.

Looking to the fact that the appeal has not been heard since long, it would be just and proper that appeal No. TEN.B.A. 101/97 is heard at an early date. Learned advocate Shri M.B. Gandhi has assured this court that the advocate appearing before the tribunal shall not pray for time and shall appear on the date which might be fixed by the tribunal. It is hoped that the appeal shall be fixed for hearing as soon as possible and preferably before 31.12.99.

In view of the above order, the petition stands

disposed of as allowed. Orders dated 2.7.99 and 25.10.99 passed by the Gujarat Revenue Tribunal in TEN.B.A. No. 101/97 and Restoration Application No. TEN.D.A. No. 45/99 respectively are quashed and set aside and TEN.B.A. NO. 101/97 is ordered to be restored to file. Rule is made absolute.

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